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Federal Communications Commission DA 04-2860

SEP 9 1 11 PM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Bald Knob, and
Greenbrier, Arkansas)

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MB Docket No. 03-247
RM-10831

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 1, 2004

Released: September 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division issued a Notice of Proposed Rulemaking in response to a Petition for Rule Making filed by Crain Media Group, LLC ("Petitioner"), licensee of FM Station KKSX, Bald Knob, Arkansas.¹ The Notice proposes the reallocation of Channel 296C3 from Bald Knob, Arkansas, to Greenbrier, Arkansas, and the modification of the license of FM Station KKSX to specify Greenbrier as the community of license. Petitioner's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² Petitioner filed comments supporting the changes proposed in the Notice. No other comments were received in response to the Notice.

3. Greenbrier is an incorporated community with a population of 3,042 persons, according to the 2000 U.S. Census. Petitioner states that Greenbrier has experienced rapid growth in recent years, growing from 2,130 residents in 1990 to 3,042 in 2000, a 43 percent increase. Greenbrier is self-governing with its own mayor, city council, and volunteer fire department, police department, and municipal court. Greenbrier has its own municipal water and sewer system, public library ("Greenbrier Public Library"), and school district ("Greenbrier School District"), which includes an elementary school, middle school, junior high, and high school. There are several churches, banks, restaurants, and other businesses that serve the community of Greenbrier. Many of these businesses and organizations incorporate the community's name in their business or organization's name.

4. The petitioner's proposal involves a change of transmitter site that will create some gain and loss areas. The loss area, consisting of 4,116 square kilometers, contains 77,818 persons. The gain area, consisting of 4,116 square kilometers, contains 126,152 persons. The proposal thus would produce a net

¹ *Bald Knob and Greenbrier, Arkansas*, 18 FCC Rcd 25,640 (MB 2003) ("Notice"). Crain Media Group, LLC, is the successor in interest to Crain Media Group, LLC, the original petitioner in this proceeding. Crain Media Group, LLC is the current licensee of FM Station KKSX, Bald Knob, Arkansas.

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

gain of 48,334 persons and neither gain nor loss in area served. Adoption of the proposal would not result in the creation of a white or gray area. There are several small sections of the loss area of Channel 296C3 at Bald Knob that will be left with fewer than five full-time services once Station KKSJ(FM) moves to Greenbrier. In the loss area, 2,485 persons in 161 square kilometers will be left with four full-time aural broadcast services, and 149 persons in 62 square kilometers will be left with three full-time aural broadcast services. No part of the loss area will be left with fewer than three full-time services. The entire gain area of Channel 296C3 at Greenbrier is already served by at least five other full-time aural broadcast services, and thus, it is a well-served area. Greenbrier is not located within an urbanized area, and the proposed Channel 296C3 facility at Greenbrier would not cover any part of any urbanized area with the 70 dBu contour, so there is no need to conduct a *Tuck* analysis.³

5. Because Greenbrier is an independent community, the requested change of community will satisfy priority three of the Commission's allotment priorities, whereas retention of Channel 296C3 at Bald Knob would satisfy only priority four.⁴ Adoption of the proposal also will eliminate an existing short-spacing,⁵ and it will result in a substantial net gain in persons served by Station KKSJ(FM). We find that these benefits from the proposed change of community outweigh the removal of a fourth or fifth reception service from a comparatively small number of persons within the current service area of Station KKSJ(FM). We therefore conclude that the public interest would be served by reallocating Channel 296C3 at Greenbrier, Arkansas. Petitioner's transmitter site for Channel 296C3 at Greenbrier will be fully-spaced. The allotment can be made with a site restriction of 8.8 km (5.5 miles) northeast of Greenbrier.⁶

6. This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

7. Accordingly, IT IS ORDERED, That effective October 18, 2004, the FM Table of Allotments, 47 U.S.C. Section 73.202(b), IS AMENDED as follows:

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

⁴ In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁵ Station KKSJ(FM) at Bald Knob is a short-spaced station pursuant to Section 73.215 of the Commission's rules.

⁶ The new reference coordinates for Channel 296C3 at Greenbrier are: 35-17-28 NL and 92-19-14 WL.

<u>Community</u>	<u>Channel Number</u>
Greenbrier, Arkansas	227C2
Bald Knob, Arkansas	----

8. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. Section 316(a), that the license of Crain Media Group, LLC, for FM Station KKSX, IS MODIFIED to specify operation on Channel 296C3 at Greenbrier, Arkansas, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing

9. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Crain Media Group, LLC, licensee of FM Station KKSX, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Larry Crain, Managing Member
Crain Media Group, LLC
200 South Commerce
Suite 702
Little Rock, Arkansas 72201

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Assistant Chief, Audio Division
Media Bureau**